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No. 90-1377

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

MARY CATHERINE HALVORSEN,
Petitioner,

v.

ALBERT (BOYER) HALVORSEN,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Washington

---

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

INTRODUCTION

The petition for a writ of certiorari filed by Mary Catherine Halvorsen in this matter is utterly without merit and should be denied. Her four latest "appeals" to the Supreme Court of Washington were frivolous, and they were therefore properly dismissed on the merits with an award of sanctions payable to Respondent. At bottom, the petition merely seeks to relitigate settled matters of state law and raises no issue worthy of this Court's review.

STATEMENT

Mary Catherine Halvorsen (herein "Mary Catherine," as she prefers), refuses to comply with terms of a 1978 divorce decree relating to what is known as "the Northwoods Terminal property." Her latest appeals to the Supreme Court of Washington, dismissal of which give

rise to her instant petition, all arise from that refusal. In fact, that refusal has been at the heart of several prior appeals by Mary Catherine in this matter, including an earlier petition to this Court. (11a.)

Albert (Boyer) Halvorsen and Mary Catherine Halvorsen were divorced by a Decree of Dissolution entered on February 23 1978 after a lengthy trial in King County Superior Court. (11a.) As part of the division of property, Mary Catherine was awarded one-half of what is known to the parties as "the Northwood Terminal property," which was then and is now the business premises of Boyer Towing, Inc. (herein "BTI") in Ketchikan, Alaska. Mr. Halvorsen is the founder of BTI, and has at all times been the president and a major shareholder of the company. The Northwoods Terminal property was then (and is now) essential to the operations of BTI, and the Decree of Dissolution provided that Mr. Halvorsen or BTI could purchase Mary Catherine's one-half interest in that property for a fixed amount, payable in installments.

Mary Catherine first appealed from numerous aspects of the 1978 divorce decree under Cause No. 7841-1-I in Division I of the Court of Appeals of the State of Washington. As the court there said in an unpublished decision issued July 14, 1980 (1a):

> The wife appeals from a judgment and decree dissolving her marriage to Boyer Halvorsen.
>
> She challenges the property division, award of child support and the failure of the trial court to award her maintenance and attorneys' fees. We modify the provision of the Decree relating to the 'Northwoods Terminal property' and affirm the judgment and decree in all other respects.
>
> The trial of this action ran from December 20, 1977 through January 13, 1978. The verbatim report of proceedings comprises seven volumes, meticulously summarized in 38 pages of detailed findings of fact

> and followed by ten pages of carefully drafted conclusions of law.
>
> Basically the issues raised by the appellant are factual and she is attempting to have this court re-try the case.

The court declined, of course, to retry the entire case, but did modify the award to Mary Catherine with respect to the Northwoods Terminal property. Specifically, the amount payable to Mary Catherine for her interest in the Northwoods Terminal Property was increased from the sum of $234,906 to the sum of $300,025.00.

Mary Catherine next filed three *additional* pro se appeals, which were consolidated and decided by Division II of the Court of Appeals of the State of Washington in an unpublished decision issued on January 12, 1982 (10a). As that court then said:

> The petitioner, Mary Catherine Halvorsen, acting pro se in three consolidated cases, appeals various orders relating to the enforcement of the decree dissolving her marriage to the respondent. The petitioner raises a plethora of issues in her three appeals, all of which we find to be without merit. All the orders appealed from are accordingly affirmed.

Referring specifically to Mary Catherine's renewal of her insistent claims with respect to the Northwoods Terminal property, Division II of the Court of Appeals further observed that:

> The petitioner also argues that the trial court exceeded its jurisdiction in adding a paragraph to the decree, while the decree was being appealed, giving the respondent a half-share of the Northwoods Terminal property. The petitioner does not contend that the paragraph added to the decree is inconsistent with the original terms of the decree; instead, she argues that because the decree did not award the half-share of the property to either party, she and the respondent should share it as tenants-in-common.

> Thus, despite the clear intention of the trial court to award half of the Northwoods Terminal property to each spouse, she claims three quarters of it. (13a)

Division II of the Court of Appeals dispensed with that irrational argument in short order, and then turned to Mary Catherine's second argument with respect to the Northwoods Terminal property, stating:

> The petitioner's second argument that the modification was invalid is that the trial court had no jurisdiction over property located in Alaska. This issue cannot be raised in this appeal because it goes to the validity of the decree itself, which was affirmed in the earlier appeal. In any event, the decree was a valid exercise of the court's *in personam* jurisdiction over the parties, even though it affected real property outside the jurisdiction. (Citation omitted.)

During the course of the various appeals just described, and thereafter, Boyer Towing, Inc. made payment in full to Mary Catherine for her interest in the Northwoods Terminal property. She failed, however, to provide a fulfillment deed, and counsel for Mr. Halvorsen therefore wrote to Mary Catherine requesting that she provide BTI with a deed to the Northwoods Terminal property. Mary Catherine replied:

> The Northwoods property is half mine and I have no intention of selling it.

Moreover, said Mary Catherine:

> I have never acknowledged the divorce decree because I believe I was totally defrauded.

Mr. Halvorsen promptly moved for an order requiring Mary Catherine to show cause why she should not be ordered to execute the requisite deed.

At the conclusion of a show cause hearing on August 4, 1989, Commissioner Ralph Moldauer of the King County Superior Court entered an Order Directing Execution of

Quit Claim Deed (18a; herein "the August 4, 1989 Order"). Mary Catherine's motion to vacate that order was denied on August 18, 1989. Mary Catherine has not appealed in any way from the August 18, 1989 order, and both that order and the August 4, 1989 Order Directing Execution of Quit Claim Deed are final and non-appealable. Mary Catherine nonetheless refuses to comply with those orders, and refuses to provide the requisite deed.

Because of Mary Catherine's refusal to provide the requisite deed, Mr. Halvorsen next filed the August 4, 1989 order in Ketchikan, Alaska under the Uniform Enforcement of Judgments Act. Before Mr. Halvorsen could proceed to enforce the Washington order in the Alaska courts, however, Mary Catherine launched a series of new pleadings, all of which she cross-filed in both Washington and Alaska. The primary pleading thus filed by Mary Catherine was a "Motion to Vacate the [1978] Decree of Dissolution with its Attendant Judgments under 60(b) (5)." The theory advanced in her Motion to Vacate is that the February 23, 1978 divorce decree, which was affirmed by both Division I and Division II of the Court of Appeals of the State of Washington, is nonetheless "void" for want of personal jurisdiction over Mary Catherine. Specifically, she claims that when Mr. Halvorsen cross-petitioned for dissolution (in response to her Petition for Separate Maintenance) she was not served with a Summons. Her contention is patently without merit. The facts of record are that Mary Catherine joined in the petition for dissolution. Moreover, she repeatedly sought affirmative relief in both the trial court and on appeal, and she cannot now deny the court's in personam jurisdiction. Indeed, Mary Catherine received affirmative relief in her first appeal when Division I of the Washington Court of Appeals increased the amount payable to her for her interest in the Northwoods Terminal property.

Mr. Halvorsen promptly filed, in the trial court under the caption of the original divorce proceeding, a motion for an order quashing Mary Catherine's motion to vacate the original divorce decree, scheduling the hearing for March 7, 1990. Mary Catherine was personally served with notice of that hearing and was provided with all supporting materials on February 13, 1990. That notice generated another barrage of pleadings and correspondence by Mary Catherine. In the trial court, she filed an "Answer to Motion to Quash and For Related Relief," an "Answer to Memorandum of Authorities," a (proposed) "Order Denying Motion to Quash and Related Relief," a "Motion for Appearance by Telephone Conference," and a (proposed) "Order Granting Motion to Appear by Telephone Conference." At the same time, and in an attempt to stall the trial court proceeding, she filed in the Supreme Court of Washington a "Notice of Appeal," a "Motion for Stay" and a (proposed) "Order for Stay." She also directed a letter dated February 17, 1990 to the Chief Justice of the Supreme Court of Washington demanding a stay of proceedings in the trial court. She also wrote a letter dated February 18, 1990 to the "Calendar Assignment Clerk, King County Superior Court" demanding that no less than nine King County Superior Court judges recuse themselves from hearing Mr. Halvorsen's motion to quash scheduled for hearing on March 7, 1990.

In her Answer to the Motion to Quash, Mary Catherine stated, in part:

> Mary Catherine filed a motion to vacate the decree of dissolution but did not note it for a hearing because she has offered to settle this matter out of court.

The apparent reference is to her June 21, 1989 demand letter stating that "The Northwoods Terminal property is half mine and I have no intention of selling it . . .

[and] I have never acknowledged the divorce decree because I believe I was totally defrauded."

As Mary Catherine further stated in her answer to Mr. Halvorsen's motion to quash:

> Mary Catherine's motion to vacate is not an indirect attempt to avoid compliance with the court's order directing execution of quit claim deed entered by Family Court Commissioner Pro Temp Ralph Moldauer [on August 4, 1989]. Mary Catherine objected to family court's jurisdiction in particular and King County Superior Court's jurisdiction in general. No further appeals were pursued *because Mary Catherine does not recognize the jurisdiction of the state of Washington to dispose of the state of the out-of-state Alaskan property.* A quit claim deed directly affects title to property and this order directing the quit claim deed to Alaska property directly affects out-of-state property which is beyond the jurisdiction of the court. As far as she is concerned that [August 14, 1989] order is void ab initio and is in effect no order at all.

It clearly mattered not to Mary Catherine that Division II of the Washington Court of Appeals had squarely resolved precisely the same jurisdictional issue against her in its January 12, 1982 decision. (10a.)

Mary Catherine's motion to appear by telephone (for the Motion to Quash set for March 7, 1990) was heard and denied on March 1, 1990. The motion to quash Mary Catherine's motion to vacate the February 23, 1978 decree of divorce was heard and granted on the merits on March 7, 1990. Mary Catherine chose not to appear, and she instead filed a series of four appeals in the Supreme Court of Washington, all of which were dismissed as frivolous. This petition followed.

REASONS FOR DENYING THE WRIT

The basic problem here is that although Mary Catherine has been paid in full for her one-half interest in the Northwoods Terminal property, she refuses to execute a fulfillment deed. She refuses to do so because she also refuses "to acknowledge" the 1978 divorce decree even though it has twice been affirmed on appeal. The August 4, 1989 order directing that she execute the requisite deed is final and non-appealable, but she refuses to comply. Mary Catherine's motion to vacate the February 1978 divorce decree, her motion for telephone appearance, her motion for stay, and her four latest "appeals" to the Supreme Court of Washington all flow inexorably from those irrational refusals. Those matters were all raised by Mary Catherine's third appeal (27a) from the trial court orders of March 1, 1990 (denying telephone appearance) and March 7, 1990 (quashinging her motion to vacate the 1978 divorce decree). The third appeal was frivolous, however, and the result was that all four appeals were dismissed by the Supreme Court of Washington on June 8, 1990 (31a), with appropriate sanctions under Washington's Rule of Appellate Procedure 18.9. (28a)

It is well established in Washington that an appeal is frivolous under RAP 18.9 if:

> There are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there is no reasonable possibility of reversal.

Federal Land Bank v. Redwine, 51 Wn. App. 766, 770, 755 P.2d 822 (1988). *See also, Boyles v. Dept. of Retireemnt Systems*, 105 Wn.2d 499, 506-07, 716 P.2d 869 (1986).

Applying that standard to Mary Catherine's third appeal to the Supreme Court of Washington requires that it be considered in two parts, as follows:

I. THE TELEPHONE APPEARANCE ISSUE

Mary Catherine complains that she was not allowed to appear in the trial court by telephone to resist Mr. Halvorsen's motion to quash her motion to vacate the 1978 divorce decree. Her request to appear by telephone, however, was addressed to the sound discretion of the trial court and was made solely for *her* convenience. Mr. Halvorsen's motion to quash was made necessary in the first place by Mary Catherine's own motion to vacate the original divorce decree. Moreover, Mary Catherine was personally served with notice of the scheduled March 7, 1990 hearing (and provided with all supporting materials) on February 13, 1990, nearly three weeks in advance, and she filed extensive written materials in response.

It was clearly no abuse of discretion for the trial court to deny Mary Catherine's motion to appear by telephone at the hearing scheduled for March 7, 1990. The test is whether "no reasonable person would have taken the position adopted by the trial court." *Griggs v. Averbeck Realty*, 92 Wn.2d 576, 599 P.2d 1289 (1979). No such abuse of discretion occurred in the denial of Mary Catherine's motion to appear by telephone. Moreover, the fact is that the entire question of a telephone hearing on March 7, 1990 is a red herring. It would have made absolutely no difference whether Mary Catherine had appeared in person, by telephone or by holographic image at the March 7, 1990 hearing. Nothing she could have said would alter the dispositive fact that her motion to vacate the 1978 divorce decree was and is without merit.

II. THE MARCH 7, 1990 ORDER GRANTING THE MOTION TO QUASH

Mr. Halvorsen's motion to quash was made necessary by Mary Catherine's motion to vacate the Divorce Decree of February 23, 1978. Her motion to vacate, however,

raised "no debatable issues upon which reasonable minds could possibly differ." The theory advanced by Mary Catherine on her motion to vacate was that the 1978 decree is "void" for lack of personal jurisdiction because she was allegedly not served with a summons when, in response to her initial Petition for Separate Maintenance, Mr. Halvorsen cross-petitioned for dissolution of the marriage of the parties. The dispositive fact, however, is that no summons was required on that cross-petition because, as stated in both the Decree of Dissolution and the Findings of Fact entered on February 23, 1978:

> . . . counsel for petitioner-wife having in his opening statement stated that petitioner-wife will not oppose the entry of a decree of dissolution. . . .

Where both spouses join in a petition for dissolution, there is no party to respond to the petition for dissolution, and no necessity for service of process. *Marriage of Wherley*, 34 Wn. App. 344, 661 P.2d 155 (1983). As the *Wherley* court noted, a decree of dissolution is entered "by consent" where both spouses join in the petition for dissolution. Such was the case here.

Moreover, and even if the foregoing were not so, the record discloses that Mary Catherine repeatedly invoked jurisdiction of the Washington courts by seeking relief during a lengthy trial and on appeal. Indeed, the dollar amount payable to Mary Catherine for her interest in the Northwoods Terminal property was increased by Division I of the Washington Court of Appeals in its July 14, 1980 decision. (1a) Having thus invoked the jurisdiction of the Washington courts for affirmative relief, and having *received* affirmative relief from those courts, Mary Catherine cannot now assert that those same courts lacked jurisdiction. *Livingston v. Livingston*, 43 Wn. App. 669, 710 P.2d 166 (1986).

After taking the foregoing matters into account, the Supreme Court of Washington properly dismissed all four of Mary Catherine's latest appeals as frivolous on the merits. The court's further award of sanctions pay-

able to Mr. Halvorsen was based on counsel's affidavit supporting that award. (28a)

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied. It raises no issue worthy of consideration by this Court, and is instead merely an attempt to relitigate matters properly resolved in the state court under established Washington law.

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DATED this 3rd day of April, 1991.

APPENDICES

APPENDIX A

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

No. 7841-1-I

DIVISION ONE

IN RE THE MARRIAGE OF

MARY CATHERINE HALVORSEN,
Appellant,

and

ALBERT (BOYER) HALVORSEN,
Respondent.

Filed Jul. 14, 1980

RINGOLD, J.—The wife appeals from a judgment and decree dissolving her marriage to Boyer Halvorsen.

She challenges the property division, award of child support and the failure of the trial court to award her maintenance and attorneys fees. We modify the provision of the decree relating to the "Northwoods Terminal Property" and affirm the judgment and decree in all other respects.

The trial of this action ran from December 20, 1977, through January 13, 1978. The verbatim report of proceedings comprises seven volumes, meticulously summarized in 38 pages of detailed findings of fact and followed by 10 pages of carefully drafted conclusions of law.

Basically the issues raised by the appellant are factual and she is attempting to have this court retry the case. We have reviewed the entire record, including the trial

judge's carefully considered 23-page oral decision and conclude that all of the findings of fact are supported by substantial evidence and will not be disturbed on appeal.

The able trial judge did not abuse his discretion in the award of child support and in the disallowance of maintenance and attorneys fees to the wife. The trial court has wide discretion and a reviewing court will not substitute its judgment as what constitutes proper child support and maintenance where the trial court fixed the award considering the applicable criteria from RCW 26.09.090 and .100. *In re Marriage of Nicholson*, 17 Wn. App. 110, 561 P.2d 1116 (1977). Similarly, the trial court properly considered the standards articulated in numerous cases such as *Robertson v Robertson*, 19 Wn. App. 425, 575 P.2d 1092 (1978); *In re Harshman*, 18 Wn. App. 116, 567 P.2d 667 (1977); and *In re Marriage of Young*, 18 Wn. App. 462, 569 P.2d 70 (1977). There is no abuse of discretion demonstrated.

In making the division of the property between the parties the trial judge sought to divide the community property equally. Except as to the Northwoods Terminal Property, the trial court properly concluded the respective interests of the community and the separate estate of each.

NORTHWOODS TERMINAL PROPERTY

The trial court made the following finding of fact and conclusion of law with respect to the Northwoods Terminal Property:

> 28. Properties were acquired jointly by the parties after the marriage as follows:
>
> . . .
>
> c. In early 1969, the parties purchased a waterfront property in Ketchikan (the "Northwoods Terminal Property" herein) for the purpose of providing badly needed loading and distribution facilities for Boyer Towing. The property was placed in use

by Boyer Towing even before the purchase was consummated and rent of $1,325 per month was paid to the parties. The rental arrangement was formalized by a written lease which commenced as of September 1, 1969, and terminates on August 31, 1979, at a rental of $1,325 per month which has been paid quarterly. The lease provided that rentals would be renegotiated at the end of five (5) years and included an arbitration provision in the event the parties could not agree on a revised rental figure. No action was taken at the end of five (5) years to increase the rental payments. When purchased, the property was relatively unimproved, containing an abandoned sawmill which in its then condition *was not useable as a building. Boyer Towing made and paid for substantial improvements to the building to make it useful as a warehouse.* Such *Improvements* included the replacement of much of the underlying pilings, construction of a floor, closing in of the ends of the building, repairing the roof, painting the building, and other *improvements.* As so *improved,* the warehouse has a stipulated fair market value of $38,088. In addition to the foregoing *improvements* to the warehouse, Boyer Towing made and paid for other substantial improvements to the overall property. These included filing and grading; the installation of a small office building having a stipulated fair market value of $9,752; the installation of large oil storage tanks and associated concrete foundation, holding tank, walkways, piping and fence, having a stipulated fair market value of $26,882; the construction of a dock having a stipulated fair market value of $25,245; and the construction of a loading ramp having a stipulated fair market value of $32,072. The stipulated fair market value of the land alone as filled and graded but without the other improvements described above amounts to $469,812. All of the land and improve-

ments are essential to the continued operation of Boyer Towing.

Conclusion of law No. 8. reads:

> The community's interest in the Northwoods Terminal Property is limited to the real estate which should be considered community property for purposes of this proceeding. Petitioner has failed to establish a separate property claim or interest in the Northwoods Terminal Property entitling her to a greater ownership interest therein than Respondent. She has also failed to establish any legal or equitable basis for compensating her or the community for improvements to the property made and paid for by Boyer Towing. Those improvements have not reverted to the community and there is no indication that such a reversion will take place in the foreseeable future.

The wife contends that inasmuch as the Northwoods Terminal real estate has always been community property, the improvements made by Boyer Towing, Inc., became part of the realty and therefore inured to the community estate. The respondent husband contends that most of the improvements are removable and therefore are not fixtures. Should they be deemed fixtures, he argues, they are trade fixtures and properly owned by the tenant Boyer Towing, Inc. Proper characterization of the improvements as separate or community property turns, then, upon a determination whether the improvements are fixtures, or trade fixtures.

Nowhere in the findings or the oral decision does the court indicate his decision whether the improvements are fixtures or his determination of the separate or community character of the improvements. From the court's statement that the petitioner "has . . . failed to establish any legal or equitable basis for compensating her or the community for improvements" we may infer that the trial court conceived the character of the improve-

ments as separate property. Because "[in] making the property division, the court must bear in mind the correct community or separate property status of the property to be divided," and because "if it fails to do so, its division of the property constitutes reversible error," we examine the character of that property. *Pollock v. Pollock*, 7 Wn. App. 394, 399, 499 P.2d 231 (1972); *see also Blood v. Blood*, 69 Wn.2d 680, 682, 419 P.2d 1006 (1966).

Our analysis starts with the restatement of the common law principle in *Lipsett Steel Prod., Inc. v. King County*, 67 Wn.2d 650, 652, 409 P.2d 475 (1965):

> "The true criterion of the fixture is the united application of these requisites: (1) Actual annexation to the realty, or something appurtenant thereto; (2) application to the use or purpose to which that part of the realty with which it is connected is appropriated; and (3) the intention of the party making the annexation to make a permanent accession to the freehold." . . .

See also, Department of Revenue v. Boeing, 85 Wn.2d 663, 667, 538 P.2d 505 (1975).

As indicated by a noted authority:

> Fixtures may be said to be in the twilight zone between real and personal property. Personal property, in order to lose its character as a chattel and become a fixture, must be annexed to the realty either actually or constructively, must be appropriated to the use of that part of the realty with which it is connected and must be intended as a permanent accession to the freehold.

1 G. Thompson, *Real Property*, § 55 at 181-82 (1980). There is no question the improvements are actually annexed to the realty and that the improvements are appropriated to the use of that part of the realty with

which it is connected. The remaining question is the intention of the annexor:

> In determining whether a chattel which has been annexed to the freehold is a trade fixture or a part of the realty, the cardinal inquiry is into the intent of party making the annexation. Often there is difficulty in determining the intent, but, whatever may be the legal relation of the parties between whom the controversy is waged, when the intent is discovered it is generally controlling. The intent . . . to be inferred, when not determined by an express agreement, from the nature of the article affixed, the relation and situation to the freehold of the party making the annexation, the manner of the annexation, and the purpose for which it is made.

Ballard v. Alaska Theatre Co., 93 Wash. 655, 662-63, 161 P. 478 (1916).

To determine intent, we look to the lease document by means of which the marital community leased the realty to Boyer Towing, Inc. Relevant portions state:

> The Lessee shall have and is hereby granted the right to improve the said real property in any manner not unlawful, providing such improvements shall not depreciate the value of the said real property.
>
> . . .
>
> . . . Lessee will at all times . . . preserve said premises in as good repair as said premises now are or may hereafter be put to, and all repairs shall be at Lessee's sole cost and expense. Lessee will quit and surrender the said premises without notice, and in a neat and clean condition, and will deliver up all keys belonging to said premises to the Lessor or Lessor's agents at the termination of this lease.
>
> . . .

> The Lessee shall cause to be insured at not less than ninety (90%) percent of total value any improvements placed on said property, and in the event of damage by fire to any structure or structures so insured, the Lessor shall either restore such structure or structures to the condition in which they were prior to the time of said fire, or the amount of said insurance shall be paid over to the Lessor.[1] The Lessee shall be responsible for the full rental of the real property as herein referred to, whether or not any improvements placed on said property by the Lessee be damaged or destroyed by fire.

From the above provisions it is clear that the respondent, who in this transaction acted both as agent of the marital community and as president of Boyer Towing, Inc., anticipated that Boyer Towing would make improvements to the realty. The clause regarding surrender of keys indicates that the respondent foresaw the need to enclose and make lockable the structures on the realty, which were not fully enclosed at the time of the commencement of the lease term. Surrender of the keys to the lessor signifies the lessee's intent that the building as improved would stay with the realty, not be removed at the end of the lease term. Finally, the insurance clause requiring the insurance proceeds to be paid over to the lessor should the destroyed improvements not be rebuilt by the lessor (see footnote 1), demonstrably indicates that the improvements contemplated were to be considered a part of the realty. We conclude that the lease document clearly manifests an intent that the improvements be deemed permanently affixed to the realty.

---

[1] Specification of the lessor rather than the lessee here seems to be an error. If the lessee is to buy the insurance it appears that the lessee is the loss payee of the insurance. That being so, it would seem that the lessee, not the lessor, would be the proper party to have the choice of rebuilding or paying the proceeds to the lessor. If, however, the lessor is the loss payee, the inference is even more cogent that the intent was to have the improvements accrue to the land.

that they are not trade fixtures, and that, therefore, they are community property.

The trial court erred in failing to ascribe the value of the repairs and improvements to the community. *Pollock v. Pollock*, *supra*. The petitioner's interest in the Northwoods Terminal Property must be increased to include one-half the value of the improvements.

The decree provides an option "to either Boyer Towing or respondent husband to elect on or before July 30, 1979, to pay petitioner wife the sum of $234,906 for her interest in the Northwoods Terminal Property." We modify the decree to increase the wife's interest therein to $300,925, and modify the right provided to Boyer Towing and to respondent husband to purchase her interest for the sum of $300,925. We further modify the decree by amending the date, July 30, 1979, in the decree, to read: "The end of business hours 30 days after the mandate pursuant to RAP 12.5(b) is issued by the State Court of Appeals." The decree is affirmed in all other respects.

This case has entailed extensive litigation, an extraordinary number of motions and counsel fees now exceeding $100,000. The respondent husband requested that this court impose attorneys' fees upon the petitioner as sanctions under RAP 10.7. The petitioner's brief is 126 pages long, with a 46-page appendix. The length of petitioner's brief violates RAP 10.4(b). Furthermore, the brief violates RAP 10.3(a)(3) and RAP 10.3(g). It is difficult to find the claimed errors, issues and arguments in petitioner's brief. The references to the findings are not helpful to determine challenged portions of the findings which are hidden in the labrythine appendix.

We have given serious consideration to the respondent's request for the imposition of attorneys' fees as sanctions but consider the comment here a sufficient reprimand. Each party shall bear his or her own attorneys' fees and costs incurred in this appeal.

Except as modified herein, we affirm.

/s/ Ringold, J.

WE CONCUR:

/s/ James, J.

/s/ Durham-DiveSirs, J.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

No. 5110-II
No. 5453-II
No. 5791-II

Division Two
Unpublished Opinion

IN THE MATTER OF THE MARRIAGE OF
MARY CATHERINE HALVORSEN,
Appellant,

and

ALBERT (BOYER) HALVORSEN,
Respondent.

Filed January 12, 1982

PEARSON, J.—The petitioner, Mary Catherine Halvorsen, acting pro se in three consolidated cases, appeals various orders relating to the enforcement of the decree dissolving her marriage to the respondent. The petitioner raises a plethora of issues in her three appeals, all of which we find to be without merit. All the orders appealed from are accordingly affirmed.

The petitioner and the respondent were married in May 1965. At that time, the respondent owned and operated a successful barge-towing operation which continued to prosper during the marriage. The record on appeal suggests that the respondent was considerably more wealthy than the petitioner when they married. The couple had three children, born in 1966, 1968, and

1970. In October 1976, the couple separated, and their marriage was dissolved, after an extensive trial, by a decree of the King County Superior Court on February 23, 1978. The petitioner appealed the dissolution decree to Division I of this court; the decree was affirmed in all but one minor respect on July 14, 1980. Her motion for reconsideration was denied on August 11, 1980; her motion for review by the Supreme Court was denied on November 7, 1980; and her mandamus petition to the United States Supreme Court was denied on April 27, 1981.

Only two provisions of the decree are directly relevant to this appeal. One provision awarded the petitioner a half-interest in property purchased by the couple in Alaska (the Northwoods Terminal Property); this half-interest was subject to an option to purchase in favor of the respondent. The decree did not explicitly provide for the disposition of the other half of the Northwoods property. The second relevant provision declared the family residence on Bainbridge Island to be the respondent's separate property, but the petitioner was given the right to live in the residence until her youngest child reached 18 years of age. The respondent was given "the right to unrestricted but reasonable use of and access to the garage" attached to the residence. He was also required to keep the exterior of the residence in "reasonably good condition and repair."

The first of the three consolidated appeals arises out of two orders made by the King County Superior Court on November 30, 1979. The first of these orders allowed the respondent to inspect the interior of the Bainbridge Island residence once every three months. The second order added a paragraph to the dissolution decree awarding the respondent an undivided half share in the Northwoods Terminal Property. This appeal was filed in Division I on December 28, 1979, and was transferred to this court on October 22, 1980.

The petitioner attacks on a number of grounds the trial court's order granting the respondent limited inspection rights of the Bainbridge Island residence. Most of the petitioner's arguments are directed at the provision in the dissolution decree declaring the residence to be the respondent's separate property, and not at the order made pursuant to the decree. The decree was affirmed by Division I of this court, and the petitioner is therefore collaterally estopped from renewing her challenge to the decree in this appeal. *Seattle-First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 588 P.2d 725 (1978) Only two of the petitioner's arguments directly challenge the inspection order. First, she argues that the order violates her Fourteenth Amendment right to privacy. No authority was cited for this proposition. The limited inspection right appears to be a reasonable measure to enforce the provisions of the decree; the petitioner is entitled to two weeks' notice before inspections, she may reschedule an inspection conflicts with her activities, and inspections are limited to one hours every three months. This does not violate the petitioner's right to privacy. Second, the petitioner argues that the trial court was without jurisdiction to grant the limited inspection right. No authority is cited in support of this proposition. It is clear that, although an appeal was pending when the order was made, the trial court had jurisdiction to enforce its decree pending appeal because the petitioner had not filed a supersedeas bond. RAP 7.2(e). *Fite v. Lee*, 11 Wn. App. 21, 31, 521 P.2d 964 (1974).

The petitioner also argues that the trial court exceeded its jurisdiction in adding a paragraph to the decree, while the decree was being appealed, giving the respondent a half-share of the Northwoods Terminal Property. The petitioner does not contend that the paragraph added to the decree is inconsistent with the original terms of the decree; instead, she argues that because the decree did not award the half-share of the property to either party, she and the respondent should

share it as tenants-in-common. Thus, despite the clear intention of the trial court to award half of the Northwoods Terminal Property to each spouse, she claims three quarters of it.

The petitioner makes two arguments that the order modifying the decree was invalid. First, the order was entered while the decree was under appeal to Division I of this court. The trial court is authorized to modify a decision that is on appeal only with the permission of the appellate court. RAP 7.2(e). No such permission was obtained prior to the making of the modification at issue here. However, the modification appears to us to be quite reasonable; it is consistent with the other terms of the decree, and the petitioner makes no argument that it unfairly represents the intent of the trial court. Justice seems to require here that compliance with RAP 7.2(e) be waived pursuant to RAP 1.2(a). Accordingly, we hold that the technical irregularity of failure to obtain prior appellate court permission for the modification does not impair the validity of the order.

The petitioner's second argument that the modification was invalid is that the trial court had no jurisdiction over property located in Alaska. This issue cannot be raised in this appeal because it goes to the validity of the decree itself, which was affirmed in the earlier appeal. In any event, the decree was a valid exercise of the court's in personam jurisdiction over the parties, even though it affected real property outside the jurisdiction. *See* Annot., 34 A.L.R.3d 962, § 4[a] (1966). The orders of November 30, 1979, are therefore both valid and enforceable.

The petitioner's second appeal is from orders made by Commissioner Gaddis of the King County Superior Court. On February 17, 1981, Commissioner Gaddis appointed a referee to investigate difference between the petitioner and the respondent regarding the respondent's right to visit his children. The cost of the referee's services was

to come out of funds held in trust for the children. On March 3, 1981, Commissioner Gaddis found the petitioner in contempt for failing to comply with an order of April 17, 1979, to allow the respondent reasonable use of the garage at the Bainbridge Island residence, and awarded the respondent $750 attorney's fees. Both of these orders were affirmed by Judge Scholfield of the King County Superior Court. The petitioner's appeal to this court from these orders was consolidated with her previous appeal.

The petitioner contends, first, that she was improperly held in contempt for failing to allow the respondent reasonable use of and access to the garage. She argues that because she never locked the garage she did not deny the respondent access to it. However, it is uncontested in the affidavits filed in respect of the contempt motion that the petitioner restricted the respondent's use of the garage by storing personal property in it. The construction of a decree is a question of law for a reviewing court to decide. *In re Marriage of Gimlett*, 95 Wn.2d 699, 704-05, 629 P.2d 450 (1981). In this case, it is clear that the petitioner denied the respondent the unrestricted use of the garage, and the contempt order is therefore affirmed.

Second, the petitioner contends that the order of April 17, 1979, is void because it was issued while an appeal of the decree was pending. It is not clear from the record before us whether in fact review had been accepted by an appellate court on April 17, 1979. Nevertheless, even if an appeal had been pending, the order to enforce the decree would be valid, since enforcement of the decree was neither superseded by the trial court, RAP 7.2(c), nor stayed by this court, RAP 8.3.

The petitioner next contends that the order of February 17, 1981, requiring her to clean out the garage and remove her cars, trash and personal property, was

an improper modification of the decree. However, the affidavits in the record make it clear that the petitioner belongings restricted the respondent's use of the garage. The order was a reasonable measure to enforce the clear meaning of the decree. It was a clarification of the decree, rather than an invalid modification. *Rivard v. Rivard*, 75 Wn.2d 415, 418, 451 P.2d 677 (1969). The petitioner also claims that the order of February 17, 1981, declaring that the respondent had no obligation to wash windows or clean the Bainbridge Island residence, is an invalid modification of the decree. Again, the order merely clarified the provision in the decree requiring the respondent to keep the exterior of the residence in "reasonably good condition and repair."

The petitioner claims that the Commissioner was without jurisdiction to rule on the validity of the trial court's April 17, 1979, order. As discussed already, the April 17 order was valid. Moreover, the petitioner cites no authority to support her contention and it therefore need not be considered on appeal. *In re Marriage of Croley*, 91 Wn.2d 288, 294, 588 P.2d 738 (1978). In any event, the Commissioner's jurisdiction is clearly established by King County Superior Court Local Rule 0.5, pursuant to RCW 2.24.040(4).

The petitioner claims that she was denied her Fourteenth Amendment right to equal protection of the law because her motions were heard by a commissioner rather than a judge. The contention is not supported by authority, and is without merit.

Her next point, also without supporting authority, is that the Commissioner was without jurisdiction under RCW 2.24.050 to award attorney's fees in the contempt motion. The Commissioner's authority is derived from RCW 2.24.040(4), which provides that commissioners shall have authority to act as referees in matters referred to them by the superior court. The superior court in Local Rule 0.5 referred to commissioners all matters

relating to motions in marriage dissolution cases. An award of attorney's fees on a motion for contempt to enforce a dissolution decree is within this broad jurisdiction.

The petitioner challenges, without citing authority, the order of February 17, 1981, providing that the fees of the referee be paid out of funds held in trust for the children. The referee was appointed to resolve differences between the petitioner and respondent over visitation of the children. The referee's study is for the children's benefit and it is not an abuse of discretion to set reasonable terms for the use of funds held in trust for the children. *Abel v. Abel*, 47 Wn.2d 816, 289 P.2d 724 (1955).

Finally, in the petitioner's catalog of grievances, is the contention, unsupported by authority, that the Commissioner abused his discretion in awarding respondent attorney's fees of $150 on March 3, 1981. Fees may be awarded in contempt proceedings. RCW 7.20.100. An award of fees is within the Commissioner's discretion, and will be upset only on the basis that no reasonable person would have made the award. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

The respondent requests an award of attorney's fees on this appeal on the basis that RCW 7.20.100 authorizes an award of attorney's fees incurred by a party in defending a contempt order. *Johnston v. Beneficial Management Corp.*, 26 Wn. App. 671, 677-78, 614 P.2d 661 (1980). The request is based also on the petitioner's failure to comply with RAP 10.3(a)(4) and (5). The petitioner failed in her original brief to make reference to the record, but filed an amended brief which complies with the rule. However, most of the "issues" raised by the petitioner are unsupported by authority. Although she is not represented by counsel on this appeal, the petitioner is a well educated woman and has had experience in appellate procedure. She has been previously ad-

monished by another division of this court for her failure to comply with RAP 10.3. We award the respondent attorney's fees in the amount of $4,000 in this appeal.

We now consider briefly the third of the consolidated appeals. On July 13, 1981, the petitioner moved the King County Superior Court for increased child support, pending her two consolidated appeals. Commissioner Gaddis denied the motion on August 4, 1981, on the grounds that he had no jurisdiction pending an appeal. RAP 7.2(e). The respondent appealed to this court. On August 31, 1981, this appeal was consolidated with the two previous appeals. The petitioner then moved this court for a temporary increase in child support. This motion was denied on October 8, 1981, on the grounds that the trial court had been given permission to modify the child support under RAP 7.2(e). The issue in the third appeal has therefore been rendered moot, having been disposed of by the order of October 8, 1981.

All of the orders appealed from are accordingly affirmed and respondent is awarded attorney's fees of $4,000 incurred in defending the contempt order of March 3, 1981.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

WE CONCUR:

/s/ Pearson, J.
/s/ [Illegible]
/s/ [Illegible]

APPENDIX C

IN THE SUPERIOR COURT
OF WASHINGTON FOR KING COUNTY

No. D-80812

IN RE THE MARRIAGE OF
MARY CATHERINE HALVORSEN,
Petitioner,

and

ALBERT (BOYER) HALVORSEN,
Respondent.

ORDER DIRECTING EXECUTION OF QUIT CLAIM DEED

THIS MATTER having come on for having before the undersigned Judge/Court Commissioner of the above-entitled court, upon the motion of Albert (Boyer) Halvorsen for an order directing that Mary Catherine Halvorsen show cause why she should not be ordered to execute a quit claim deed conveying her interest in what is known as the Northwoods Terminal property to Boyer Towing, Inc., and the court having considered the submissions of the parties and reviewed the records and files herein, and the court being otherwise fully advised in the premises, and the court finding that the relief sought by Albert (Boyer) Halvorsen should be granted, it is hereby

ORDERED, ADJUDGED AND DECREED that Mary Catherine Halvorsen is hereby directed to execute a quit claim deed in the form attached hereto conveying her interest in what is known as the Northwoods Terminal property to Boyer Towing, Inc. and to deliver said quit

claim deed bearing her acknowledged signature to Boyer Towing, Inc. at 8324 N.E. Hidden Cove Road, Bainbridge Island, Washington on or before 5 p.m. Aug. 9, 1989.

DATED this 4th day of August, 1989.

/s/ Ralph Moldauer
Court Commissioner

Presented by:

BETTS, PATTERSON & MINES, P.S.

By: /s/ PDC
PAUL D. CAREY
Attorneys for Albert (Boyer) Halvorsen

TRANSAMERICA
Title Insurance Services

Transamerica
Title Insurance Company

This Space Provided
for Recorder's Use

FILED FOR RECORD AT REQUEST OF

WHEN RECORDED RETURN TO

Name	Livingston Wernecke Betts Patterson & Mines, P.S.
Address	800 Financial Center 1215 Fourth Avenue
City, State, Zip	Seattle, WA 98161

LPB-12

QUIT CLAIM DEED

THE GRANTOR MARY CATHERINE HALVORSEN, a single woman, 10924 N.E. Bill Point Court, Bainbridge Island, Washington 98110,

for and in consideration of the fulfillment of the Real Estate Contract dated July 31, 1979,

conveys and quit claims to BOYER TOWING, INC., P. O. Box 8000, Ketchikan, Alaska 99901

the following described real estate, situated in the Ketchikan Recording District, First Judicial together with all after acquired title of the grantor(s) therein. District, State of Alaska,

SEE EXHIBIT A ATTACHED HERETO

Dated _____, 1989

MARY CATHERINE HALVORSEN

_____

(Individual)

By _____
(President)

By _____
(Secretary)

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

On this day personally appeared before me

MARY CATHERINE HALVORSEN to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this —— day of ————, 1989

_____

Notary Public in and for the State of Washington, residing at _____

My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF)

On this —— day of _____, 19—, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and to me known to be the ———— President and ———— Secretary, respectively, of ———— the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and pur-

poses therein mentioned, and on oath stated that ——— authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of Washington, residing at ———————————

My appointment expires: ———————————

EXHIBIT A

PARCEL NO. 1

All and entire Lot Four (4), Block One-A (1 A) Tidelands Addition to U. S. Survey 1408, Ketchikan, Alaska, together with all improvements situate thereon; together with the appurtenances thereunto belonging or in anywise appertaining.

PARCEL NO. 2

All and entire Lot Two (2), Block One-B (1-B), Tidelands Addition to U. S. Survey 1813, Ketchikan, Alaska, together with all improvements situate thereon; together with the appurtenances thereunto belonging or in anywise appertaining.

PARCEL NO. 3

All and entire the following described portion of U. S. Survey 1408: Commencing at Corner Number Two (2) meander corner of U. S. Survey 1408; thence East on the North Line of U. S. Survey 1813, a distance of 117.50 feet to intersect the southwesterly sideline of Tongass Avenue; thence N 50″00′ W along the southwesterly sideline of Tongass Avenue 219.20 feet; thence S 52″45′ W 16 feet to the meander line of U. S. Survey 1408; thence southerly along said meander line back to the true point of beginning; together with all improvements situate thereon; together with the appurtenances thereunto belonging or in anywise appertaining.

PARCEL NO. 4

All and entire that following described portion of U. S. Survey 1813: Commencing at Corner No. 1 Meander Corner of U. S. Survey 1813, which point is a true point of beginning of the tract herein described; thence from said true point of beginning, East along the north boundary line of U. S. Survey 1813, a distance of 131.02 feet

to the southwest line of Tongass Avenue; thence S 50″00′ E on the southwest line of Tongass Avenue 165.10 feet; thence S 43″24′ W a distance of 192.00 feet, more or less, to the Meander line of U. S. Survey 1813; thence northwesterly along said Meander line back to the true point of beginning; together with all improvements situate thereon; together with the appurtenances thereunto belonging or in anywise appertaining.

APPENDIX D

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

No. D-80812

IN RE THE MARRIAGE OF:

MARY CATHERINE HALVORSEN,
Petitioner,

v.

ALBERT (BOYER) HALVORSEN,
Respondent.

ORDER GRANTING MOTION TO QUASH AND FOR RELATED RELIEF

(Clerk's Action Required)

THIS MATTER having come on for hearing before the undersigned Judge of the above-entitled Court upon the motion of Albert (Boyer) Halvorsen for an order quashing the motion of Mary Catherine Halvorsen to vacate the Decree of Dissolution of Marriage entered herein on February 23, 1978, Albert (Boyer) Halvorsen appearing through his attorney Paul D. Carey of the law firm of Betts, Patterson & Mines, P.S., and Mary Catherine Halvorsen appearing in person pro se, and the Court having reviewed the records and files herein and considered the argument and submissions made by the parties and being otherwise fully advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that the motion of Albert (Boyer) Halvorsen is hereby granted and Mary Catherine Halvorsen's motion to vacate the

Decree of Dissolution of Marriage entered herein on February 23, 1978 is hereby quashed, and it is further

ORDERED, ADJUDGED AND DECREED that Mary Catherine Halvorsen shall not plead or otherwise act further in this matter in any way until she has fully complied with this Court's August 4, 1989 order directing execution of quit claim deed by delivering a fully executed deed in the requisite form to Boyer Towing, Inc.

DATED this 7 day of March, 1990.

/s/ Lloyd Bever
Judge

Presented by:

BETTS, PATTERSON & MINES, P.S.

By: /s/ Paul D. Carey
PAUL D. CAREY
WSBA #00435
Attorneys for Albert (Boyer) Halvorsen

Approved as to Form, Notice of Presentation Waived:

By: _____
MARY CATHERINE HALVORSEN
Petitioner, Pro Se

APPENDIX E

THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

No. D-80812

IN RE THE MARRIAGE OF
MARY CATHERINE HALVORSEN,
Petitioner,

v.

ALBERT (BOYER) HALVORSEN,
Respondent.

NOTICE OF APPEAL

[Filed Mar. 19, 1990]

Notice is hereby given that Mary Catherine Halvorsen appeals the Order of March 1, 1990 denying her the right to appear by telephone and the Order of March 7, 1990, granting a Motion to Quash Her Motion to Vacate, to the Washington State Supreme Court.

DATED this 13th day of March 1990.

/s/ Mary Catherine Halvorsen
MARY CATHERINE HALVORSE
Pro se

APPENDIX F

IN THE WASHINGTON STATE SUPREME COURT

No. 56792-0

MARY CATHERINE HALVORSEN,
Appellant,

vs.

ALBERT (BOYER) HALVORSEN,
Respondent.

AFFIDAVIT FOR ATTORNEYS FEES UNDER RAP 18.9

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Paul D. Carey, upon being first duly sworn, on oath states as follows:

1. I am counsel of record in this matter for the respondent, Albert (Boyer) Halvorsen. I am a member in good standing of the Bar of the State of Washington, have personal knowledge of all matters set forth herein, and would be competent to testify thereto if called upon to do so.

2. I make this affidavit in support of an award of attorneys' fees and costs in this matter under RAP 18.9

3. The four appeals recently filed by Mary Catherine Halvorsen in this matter are all redundant and ultimately frivolous, as shown in the Motion to Dismiss filed with this affidavit. All of those appeals arise because

Mary Catherine refuses to comply with terms of a 1978 divorce decree. She has been paid in full for her interest in a parcel of real property covered by that decree, refuses to provide a fulfillment deed, and refuses to comply with an August 4, 1989 order of the King County Superior Court directing that she execute and deliver the requisite deed. Instead, she has manufactured procedural confusion and delay with a Motion to Vacate the 1978 decree of divorce, and with motions for telephone appearance and stays, all of which she has now parleyed into four spurious appeals to this court. Indeed, her four "Notices of Appeal" are sufficiently confused that Mary Catherine has now moved for "clarification" of the procedural mess created by her own redundant fiings.

4. The motion to vacate the 1978 divorce decree, though groundless, has stalled efforts to enforce the divorce decree and the August 4, 1989 order in the Alaska courts, and clouds title to the Northwoods Terminal property. That delay is now being compounded by her four present appeals to this court.

5. Mary Catherine filed her motion to vacate the 1978 divorce decree in King County Superior Court in January of 1990. The numerous pleadings filed by Mary Catherine in the trial court and on appeal have been complex and confusing, and have required extensive written responses and several court appearances. Those efforts on behalf of Mr. Halvorsen and Boyer Towing, Inc. have to date consumed 77.2 hours of attorney and paralegal time, and reasonable attorneys' fees of $10,500.00, plus costs of $701.75. Just explaining the procedural history and unraveling the confusing appeals for purposes of a motion to Dismiss has consumed 25 pages of explanation and an appendix of 33 exhibits. The cost of service of process on Mary Catherine alone exceeds $200.00, each time, because she has moved to a remote village in Vancouver, British Columbia, and her home is only accessible by boat, weather permitting. Ab-

sent her refusal to comply with lawful court orders, however, and her refusal to provide a deed to property for which she was long ago paid in full, all such fees and costs would be totally unnecessary.

6. I respectfully submit that Mary Catherine's behavior in this matter is inexcusable, and that the court should dismiss the pending appeals and direct that she reimburse Mr. Halvorsen and Boyer Towing, Inc. for the full amount of all attorneys' fees and costs they have incurred in this matter since January of 1990.

DATED this 9th day of May, 1990.

/s/ Paul D. Carey
PAUL D. CAREY
Affiant

SUBSCRIBED and SWORN to before me on this 9th day of May, 1990, by Paul D. Carey.

/s/ Paula R. Gohrich
Notary Public for the
State of Washington
Residing at Seattle, WA
My Commission expires 09/29/92

APPENDIX G

THE SUPREME COURT OF WASHINGTON

No. 56972-0

MARY CATHERINE HALVORSEN,
Petitioner,

v.

ALBERT (BOYER) HALVORSEN,
Respondent.

ORDER DENYING PETITIONER'S MOTION TO MODIFY CLERK'S RULING; GRANTING COURT'S MOTION FOR DISMISSAL AND GRANTING RESPONDENT'S MOTION TO DISMISS

This matter came before Department I of the Court on its June 5, 1990, Motion Calendar on Petitioner's Motion to Modify Clerk Ruling; Court's Motion for Dismissal and Respondent's Motion to Dismiss. Department I having considered the motion and the files herein;

Now, therefore, it is hereby

ORDERED:

That Petitioner's Motion to Modify Clerk's Ruling is denied; Court's Motion for Dismissal is granted and Respondent's Motion to Dismiss is granted.

Respondent's motion for terms is granted. Petitioner, Halvorsen, is ordered to pay $5,500.00 as compensatory damages to Respondent. If the award is not paid by August 1, 1990, the Clerk of the Supreme Court is directed to transmit the award to King County Superior Court with direction to enter a judgment is accordance with the award.

DATED at Olympia, Washington this 8th day of June, 1990.

/s/ Keith M. Callow
Chief Justice

APPENDIX H

RULE 18.9 VIOLATION OF RULES

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or other authorized person preparing a verbatim report of proceedings, who uses these rules for the purpose of delay or who fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.

(b) Dismissal on Motion of Commissioner or Clerk. The commissioner or clerk, on 10 days' notice to the parties, may (1) dismiss a review proceeding as provided in section (a) and (2) except as provided in Rule 18.8 (b), will dismiss a review proceeding for failure to timely file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review. A party may object to the ruling of the commissioner or clerk only as provided in Rule 17.7.

(c) Dismissal on Motion of Party. The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review, or (2) if the application for review is frivolous, moot, or solely for the purpose of delay, or (3) except as provided in Rule 18.8(b), for failure to timely file a notice of appeal, a notice for discretionary

review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review.

(d) Objection to Ruling. A counsel upon whom sanctions have been imposed or a party may object to the ruling of a commissioner or the clerk only as provided in Rule 17.7.

[Amended effective September 1, 1990.]